

## ARBITRATOR'S DECISION

SHEBOYGAN COUNTY  
(Sheriff's Department)

and

SHEBOYGAN COUNTY LAW ENFORCEMENT EMPLOYEES  
(Local 2481, AFSCME, AFL-CIO)

Case XXVI, No. 20511, MIA-249  
Decision No. 14859-A

November 24, 1976

Gordon Haferbecker, Arbitrator

### BACKGROUND

The parties to this interest arbitration proceeding are Sheboygan County, Wisconsin, "Employer", and the Sheboygan County Law Enforcement Employees, Local 2481, American Federation of State, County, and Municipal Employees, AFL-CIO, the "Union". There are about 76 employees in the bargaining unit which includes all employees of the Sheriff's Department except the Sheriff and Inspector.

The Union was certified by the Wisconsin Employment Relations Commission on September 19, 1975. Prior to that time there had been a collective bargaining agreement between Sheboygan County and the Sheboygan County Law Enforcement Association.

The Union and the Employer met for the purpose of bargaining a 1976-77 contract on 12 occasions beginning October 15, 1975 and concluding May 11, 1976. The membership of the local rejected the County's "final offer" on May 15, 1976. The Union suggested further negotiations and/or mediation but the Employer was unwilling to consider modification of its position.

The Union petitioned the WERC for final and binding arbitration on May 24, 1976. Dennis McGilligan of the WERC staff conducted an informal investigation on July 22, 1976. On August 24, 1976, the WERC initiated final and binding arbitration to resolve the impasse. The parties were instructed to select an arbitrator from the panel submitted to them by the WERC. Gordon Haferbecker of Stevens Point was appointed as the arbitrator by the WERC on September 2, 1976.

The arbitration hearing was held at the Sheboygan County Courthouse on October 15, 1976. The Employer was represented by Mr. Alexander Hopp, Corporation Counsel and Representative for the Personnel Committee of the Sheboygan County Board of Supervisors. The Union was represented by Michael J. Wilson, District Representative for Local 2481, AFSCME, AFL-CIO. The Employer and the Union each presented exhibits and witnesses. The Employer's exhibits included his Brief. By agreement, the parties dispensed with having a court reporter and transcript. It was agreed that the Union representative would send his final Brief to the arbitrator and to the other party by October 29, 1976. This was done.

The principal unresolved issues included definitions, management rights, dues deductions and fair share payments, wages, vacations, and vacancies.

The arbitration proceeding is according to Form 2 wherein the arbitrator by statute selects the final offer of one of the parties and issues an award incorporating that offer without modification.

The arbitrator will first review each of the issues, indicating the stand of the Union and of the Employer and summarizing the most significant arguments related to the issue.

ISSUE ONE: Definitions (Part IV of the Contract). The Union proposes as Section 2 and 4 of the article: 2. Regular Part-time Employee is a person hired to fill a part-time position and works on a regularly scheduled shift basis or is employed as a Matron. 4. Part-time employees shall receive all fringe benefits (holiday, vacation and sick leave benefits shall be pro-rated). Matrons shall receive no fringe benefits except uniform allowance, pension contributions and county group insurance benefits.

The Employer proposes as Section 2: 2. Regular Part-time Employee is a person hired to fill a part-time position and works on a regularly scheduled shift basis. The Employer rejects Section 4 above.

The Employer prefers its wording of Section 2. It feels that Matrons should not be identified as regular part-time employees as in the County's view they are temporary employees, hired each time for a particular purpose to meet the needs of the County at that time. The Employer opposed the proposed Section 4. It feels that the definitions section should be limited to defining terms and should not be used to grant benefits. The Employer also rejects the concept that part-time employees should receive fringe benefits on a pro-rated basis and fears that this could open the door to claims for fringe benefits for any of the special deputies who work special events such as Road America (Employer Brief: Exhibit #30).

At the hearing the Employer indicated that Matrons would continue to receive health, life insurance, and retirement benefits.

The Union contends that including Matrons in the unit is consistent with WERC decisions which have considered them to be regular part-time employees. If the Employer were to treat them as temporary employees, they would have no protection under the agreement in case they were disciplined or terminated. The Union thinks the Employer's fear that special deputies might claim fringe benefits is unfounded since such deputies do not work "on a regularly scheduled shift basis."

The Union contends that the County's acceptance of the payment of insurance and retirement benefits for Matrons is another indication of their regular employment status. Casual or temporary employees would not be eligible for such benefits.

The Union also argues that the County's position on the fringe benefits for Matrons was different at the hearing on October 15 than it was in its final offer submission on August 3. The Employer had no right to amend its final offer.

Arbitrator's comments: It does appear from the Employer's granting of certain benefits, from WERC decisions, and from the Matrons' participation in the WERC election that they should be regarded as regular part-time employees. The parties seem to be in agreement concerning the fringe benefits that Matrons should receive. I am not certain that the Employer's final offer did change between August 3 and October 15. On August 3 the Employer did reject Section 4 but this didn't necessarily mean the discontinuance of fringe benefits for Matrons. However, at the hearing Matron Danielle Ross, as a witness, seemed to feel that most fringe benefits for Matrons had been dropped.

Probably the County's fear concerning fringe benefits for special deputies would be less if the Union proposal for Section 4 would start as Section 2 does with the words "Regular Part-time Employees" rather than just "Part-time Employees."

ISSUE TWO: Management Rights (Article V of the Contract). The Union proposes a Management Rights section as follows:

#### Article V-Management Rights

Introductory clause. Except as otherwise provided in this agreement the Employer shall have the right to: Section (a) carry out the statutory mandate and goals assigned to the County utilizing personnel, methods and means in the most appropriate and efficient manner possible. It is understood and agreed, however, that should new classifications, reclassifications, reallocation or substantial change in job duties occur, the parties agree to meet and negotiate wages, hours and working conditions for any such positions. Section (c) to determine the specific hours of employment, the length of the work week and to make such changes

in the various details of employment it from time to time deems necessary for the effective and efficient operation of the Sheriff's Department. It is understood and agreed that shift rotation during the term of this Agreement shall remain the same as scheduled prior to the effective date of this Agreement.

The Employer proposed the following wording for Management Rights (Article V):

#### MANAGEMENT RIGHTS

Nothing in this Agreement shall interfere with the right of the County in accordance with applicable laws, rules and regulations, (but not limiting the same by the herein enumeration), to:

- (a) Carry out the statutory mandate and goals assigned to the County utilizing personnel, methods and means in the most appropriate and efficient manner possible.
- (c) To determine the specific hours of employment, the length of the work week and make such changes in the various details of the employment it from time to time deems necessary for the effective and efficient operation of the sheriff's department.

The Employer states that it has preferred not to have a Management Rights clause and has not asked for or included such in past Sheriff's Department labor contracts. It was satisfied that in that way the statutory and common law construction of Management Rights would assure the County of the fullest authority to run the department in the best interests of law enforcement. The Employer feels the Union proposal would limit its lawful management rights and that any statement of Management Rights should be a broad statement of authority.

The Union argues that it has agreed to every expressed right requested by the Employer but it objects strongly to the Management Rights introductory statement:

Nothing in this Agreement shall interfere with the right of the County in accordance with applicable laws, rules and regulations, (but not limiting the same by the herein enumeration), to: (a) . . . (b) . . . (c) . . . (d) . . . (emphasis added). What are the applicable laws, rules and regulations? Are they initiated locally by the Employer? There are already provisions in the Agreement providing for adjustment of the Contract to changes in laws (Separability) and providing for emergency situations (Work Week-Article IX, 8).

The Union contends that it has the duty to negotiate over wages, hours, and working conditions and that its proposal is fair and reasonable and would work no hardship on the Employer.

Arbitrator's comments. I have examined the Management Rights clauses in most of the collective bargaining agreements in the Union's Exhibits. I can appreciate the concern that each party has concerning the proposal of the other. The Employer's proposal is vague and can properly arouse Union concern with a phrase such as "applicable laws, rules, and regulations." The Union's proposal does require negotiations concerning new classifications, reclassifications, and the like. It also requires that present shift rotations be unchanged during 1976 and 1977.

ISSUE THREE. Dues Deduction and Fair Share Payments (Article VII). At present the Employer has not granted fair share to the Sheriff's Department employees nor to any other County employees. The Union and the Employer are each proposing a fair share section but with differing provisions. The Employer's proposal is as follows:

#### VII.

##### DUES DEDUCTION AND FAIR SHARE PAYMENTS

1. Dues Deductions. Upon the signing of this agreement the County will deduct from the pay of the employees their Union membership dues provided that at the time of such deduction there is in the possession of the County a current written assignment signed by the employee authorizing such a deduction. The assignment herein provided for may be revoked by the employee at any time by giving thirty days written notice of such revocation.

2. Payment for Representation Expenses. . . .

- (a) Waiver of Payment to Union. Any employee who, because of religious convictions, cannot join the Union and desires to obtain a waiver with regard to the Fair Share Contribution required may petition the County Board personnel Committee as to such matter and present his case to such committee. If the committee determines a valid basis exists for such objection to payment it may authorize waiver of such payment to the Union but an equivalent amount shall be paid by such employee to such charitable organization located in Sheboygan County as the Union and the County may mutually agree to be appropriate.
- (b) Refunds of Political Expenditures. The Union agrees that it will annually supply to all non-members a printed statement setting forth their rights to have refunded to them that proportionate share of their payment which represents sums spent by the Union or its state and national affiliate for political purposes.
- (c) Referendum to Authorize Fair Share Agreement. The Fair Share provisions herein set forth shall become effective and binding on both parties when such agreement has been ratified by a referendum conducted among all employees in the bargaining unit. Unless 2/3 of the voting employees vote in favor of the Fair Share Agreement, and unless such 2/3 also constitute a majority of the employees in the collective bargaining unit, this Fair Share Agreement shall be null and void and the Fair Share Agreement shall not be implemented during the term of this contract. This referendum shall be conducted by the Wisconsin Employment Relations Commission on the petition of the Union and be in compliance with Sec. 111.70 (2) Wis. Stats. Only one such referendum shall be conducted during the term of this Agreement and failure to obtain a two-thirds vote shall make ineffective the herein Agency Shop Provisions.
- (d) Conditions for Continued Fair Share Deduction. During the period when the above Fair Share payment is in effect the Union agrees that any employee of the department will be permitted to join the Union without payment of any additional initiation fees or other assessments or charges of any kind.

3. Forfeiture. In the event that the bargaining representative, its officers, agents or any of its members, acting individually or in concert with one another, engage in or encourage any strike or work stoppage against the County, the dues deductions and payments of Fair Share contributions made in accordance with this Agreement shall be terminated forthwith by the County. Thereafter, for a period of one year, measured from the date of the onset of such strike or work stoppage, no deductions whatever shall be made from the earnings of any employee, nor shall any payment whatever be made to the treasurer of the bargaining representative by the employer.

The Union's proposal is as follows:

ARTICLE VII - DUES DEDUCTION AND FAIR SHARE PAYMENTS

Section (1) Dues Deductions

Upon the signing of this Agreement the County will deduct from the pay of the employees their Union membership dues provided that at the time of such deduction there is in the possession of the County a current written assignment signed by the employees authorizing such deduction.

## Section (2)

### Subsection (2) (a) Waiver of Payment to Union

Any employee who, because of religious convictions, cannot join the Union and desires to obtain a waiver with regard to the Fair Share Contribution required may petition the County Board Personnel Committee and the Executive Board of Local 2481 as to such matter and present his case. If the parties determine a valid basis exists for such objection to payment it may authorize waiver of such payment to the Union but an equivalent amount shall be paid by such employee to such charitable organization located in Sheboygan County as the Union and the County may mutually agree to be appropriate.

### Subsection (2) (b) Referendum to Authorize Fair Share Agreement

The Fair Share provisions herein set forth shall become effective and binding on both parties when such agreement has been ratified by a referendum conducted among all employees in the bargaining unit. Unless one-half (1/2) plus one (1) of the voting employees vote in favor of the Fair Share Agreement, this Fair Share Agreement shall be null and void and the Fair Share Agreement shall not be implemented during the term of this contract. This referendum shall be conducted by the Wisconsin Employment Relations Commission according to the stipulation of the parties. Only one (1) such referendum shall be conducted during the term of this Agreement and failure to obtain the necessary vote as specified above shall make ineffective the herein Agency Shop provisions.

### Subsection --- Refunds of Political Expenditures

County proposal is denied by the Union.

### Subsection --- Conditions for Continued Fair Share Deduction

County proposal is denied by the Union (re: initiation fees).

## Section 3 Forfeiture

County proposal is denied by the Union.

Dues deduction - withdrawal notice. The Employer contends that the provision allowing employee withdrawal on thirty days notice is required by statute (Section 111.70 (3)). The County feels this section is necessary "to avoid exposing itself to a prohibited practice."

The Union thinks that the County's interpretation of the statute is in error and that the present dues deduction practice is legal. The employee may designate any two week period of each year within which it is possible to revoke the authorization. The Union does not require thirty days advance notice during this two-week period. The Union feels the current practice is less disruptive to the bargaining unit and that an annual review of membership is better than impulsive reactions. The Union also indicated that it would provide an Indemnification and Hold Harmless Provision to protect the County against claims and suits that might arise out of this provision (Union Brief, p. 40).

Religious conviction exemption from fair share payment. The County feels that it would be a conflict of interest position for the Union to participate in deciding whether it should receive the funds involved and that the County Board Personnel Committee could make a more objective decision.

The Union feels that it is a responsible agency elected by the employees to represent the interests of all members of the bargaining unit and that its offer of joint determination of the exemption is in the spirit of collective bargaining. There would also be no opportunity to appeal the Personnel Committee's decisions in this matter through "rights" arbitration under the Employer's plan.

Political contributions. The County contends that non-members should be supplied by the Union with a printed statement concerning their rights to have refunded to them that part of their payment which was spent for political purposes by the Union or its state or national affiliate. The Union stated that employees could write the national

office to get this information. The Employer feels this would put an unfair burden upon unit members who are already paying funds to the Union against their will.

The Union questions whether this issue is a mandatory subject appropriate for determination in "interest arbitration." It points out that most fair share agreements do not include such a provision (Union Exhibit #61, p. 26). Local 2481 must comply with legal requirements concerning reports to non-members of political expenditures. The Union resents the County's intervention through collective bargaining in the Union's administration of its business.

Voting requirement for fair share. The Union proposes a majority of those voting. The Employer proposes two-thirds of those voting and at least a majority of the employees in the unit. The Employer feels that the mandate in its first fair share agreement should be clear and free from criticism.

The Union points out that the statutes do not require a referendum. The Union objects to the Employer's assumption that a non-vote is assumed a no vote. Majority rule of those voting is the prevailing practice in American government at the local, state, and federal levels.

The arbitrator notes that the Washington County Sheriff's Department contract provided that 51% of the employees in the unit would need to vote affirmatively in order to have fair share.

Initiation fees. The Employer wants a provision that during this contract period employees may join the Union without payment of initiation fees. The Employer feels that there should be no penalty upon reluctant joiners in this first fair share agreement.

While there is presently no initiation fee for members of Local 2481, the Union contends that this subject is not a mandatory matter for collective bargaining and that the Employer is asking the arbitrator to exceed his authority in making such an award. The Employer's demand on this issue could be a prohibited practice since it would involve interference with the administration of a labor organization (Union Brief, p. 54). Matters such as initiation fees depend upon applicable provisions of the local, state and national union constitutions.

Forfeiture of dues deduction and fair share in event of strike or work stoppage. The County points out that the Union and County have agreed on a "no strike-no lockout" provision (Article VIII, p. 6) and that Wisconsin law also makes striking illegal. Providing a strike penalty, as the County proposes, is a reasonable sanction.

The Union objects to the concept because it exposes the employees and the Union to multiple jeopardy in the event of a strike, even in situations where the Employer might provoke the job action. Such a provision would make it more difficult to resolve a strike once commenced and would hurt the Union-Employer relationship for a year after the strike. The Union fears that the provision as worded might apply not only to the Sheriff's Department but also to any other Department or Institution of Sheboygan County where represented by this Union (Union Brief, p. 56).

Stipulation concerning Fair Share Referendum. The Employer's proposal states: "This referendum shall be conducted by the W.E.R.C. on the petition of the Union". . . . The Union prefers "This referendum shall be conducted by the W.E.R.C. according to the stipulation of the parties."

The Employer did not comment on this issue in its Brief. The Union feels that

# IX. WAGES AND WAGE ADMINISTRATION

The wages to be paid during calendar 1976 shall be as follows:

	TIME IN POSITION			
	<u>Start</u>	<u>6 Mo</u>	<u>12 Mo</u>	<u>18 Mo</u>
Captain	6.27		6.39	
Lieutenant	6.01		6.14	
Sergeant, Detective, Technical Service Officer	5.50		5.73	
Deputy	4.83	4.99	5.15	5.31

## INCUMBENT STEP PROGRESSION

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
Secretary I 8	3.10	3.26	3.42	3.59	3.76	3.95
Secretary II 10	3.42	3.59	3.76	3.95	4.14	4.35
Acct. Clk II 12	3.76	3.95	4.14	4.35	4.56	4.79
Cook/Matron 7	2.96	3.10	3.26	3.42	3.59	3.76
Asst. Cook/ Matron 7	2.96	3.10	3.26	3.42	3.59	3.76
Matron N/A	2.55					

The wages to be paid during calendar 1977 shall be as follows:

	TIME IN POSITION			
	<u>Start</u>	<u>6 Mo</u>	<u>12 Mo</u>	<u>18 Mo</u>
Captain	6.77		6.89	
Lieutenant	6.51		6.64	
Sergeant, Detective, Technical Service Officer	6.00		6.23	
Deputy	5.33	5.49	5.65	5.81

## INCUMBENT STEP PROGRESSION

	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
Secretary I 9	3.26	3.42	3.59	3.76	3.95	4.14
Secretary II 11	3.59	3.76	3.95	4.14	4.35	4.56
Acct. Clk II 13	3.95	4.14	4.35	4.56	4.79	5.02
Cook/Matron 8	3.10	3.26	3.42	3.59	3.76	3.95
Asst/Cook Matron 8	3.10	3.26	3.42	3.59	3.76	3.95
Matron N/A	2.70					

The position of the Union is as follows:

## ARTICLE IX - WAGES, WAGES ADMINISTRATION AND WORK WEEK

The wages to be paid during calendar 1976 shall be as follows:

		<u>TIME IN POSITION</u> (per hour)			
		<u>Start</u>	<u>6 Mo</u>	<u>12 Mo</u>	<u>18 Mo</u>
Captain		6.30		6.43	
Lieutenant		6.04		6.17	
Sergeant, Detective, Technical Service Officer		5.53		5.76	
Deputy		4.86	5.02	5.18	5.34
Matron		2.55			

OFFICE AND KITCHEN/MATRON EMPLOYEES

		<u>Start</u>	<u>6 Mo</u>	<u>12 Mo</u>	<u>24 Mo</u>	<u>36 Mo</u>	<u>48 Mo</u>
<u>Class Title</u>	<u>Grade</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
Secretary I	8	3.10	3.26	3.42	3.59	3.76	3.95
Secretary II	10	3.42	3.59	3.76	3.95	4.14	4.35
Acct. Clerk II	12	3.76	3.95	4.14	4.35	4.56	4.79
Cook/Matron	7	2.96	3.10	3.26	3.42	3.59	3.76
Asst. Cook/Matron	7	2.96	3.10	3.26	3.42	3.59	3.76

The wages to be paid during calendar 1977 shall be as follows:

		<u>TIME IN POSITION</u> (per hour)			
		<u>Start</u>	<u>6 Mo</u>	<u>12 Mo</u>	<u>18 Mo</u>
Captain		6.88		7.01	
Lieutenant		6.62		6.75	
Sergeant, Detective, Technical Service Officer		6.11		6.34	
Deputy		5.44	5.60	5.76	5.92
Matron		2.70			

OFFICE AND KITCHEN/MATRON EMPLOYEES

		<u>Start</u>	<u>6 Mo</u>	<u>12 Mo</u>	<u>24 Mo</u>	<u>36 Mo</u>	<u>48 Mo</u>
<u>Class Title</u>	<u>Grade</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
Secretary I	9	3.26	3.42	3.59	3.76	3.95	4.14
Secretary II	11	3.59	3.76	3.95	4.14	4.35	4.56
Acct. Clerk II	13	3.95	4.14	4.35	4.56	4.79	5.02
Cook/Matron	8	3.10	3.26	3.42	3.59	3.76	3.95
Asst. Cook/Matron	8	3.10	3.26	3.42	3.59	3.76	3.95

The Union is proposing a 58 cents per hour increase the first year of the contract for positions such as Deputy while the Employer is proposing 55 cents. For the second year the Union is proposing an increase of 58 cents per hour while the Employer is proposing 50 cents per hour. For other positions in the Department such as Secretary I, the Union and County proposals for 1976 and 1977 are similar except that the Union wants to pay the Matron the same wage as the Assistant Cook while the Employer wants to pay a lower wage to the Matron position (for 1976, \$2.55 vs. the Union's \$2.96).

Both parties presented extensive testimony and exhibits on the wage issue. The Employer's first 29 Exhibits dealt with this issue. The Union's Exhibit #61, presented at the hearing included much comparative wage data and further data and argument were presented in the Union Brief. The parties presented data and comparisons that the arbitrator should take into account such as ability to pay, cost of living, comparisons with other county employees, comparisons with other law enforcement agencies, and wages in the private sector. The arbitrator has read carefully the Exhibits and the argument



presented by each party. I will not attempt to summarize all of the data and argument related to this issue but will state what I think is most significant in this case.

Employer Position on Wages. The Employer's law enforcement wage comparisons compare Sheboygan County with other counties in Wisconsin in the 50,000 to 100,000 population range. Among the 13 counties compared, Sheboygan County ranked fifth in per capita cost spent on public safety (police, fire, jail and ambulance costs). It also ranked fifth in non-capital expenditures for public safety. The Employer also showed that non-capital expenditures for the Sheriff's Department in Sheboygan County had increased 313% from 1965 to 1975, compared to a 180% increase for other county expenses. The number of personnel in the Sheriff's Department nearly doubled from 1965 to 1975 while the payroll increased 257% and the workload (papers served, etc.) increased by 48% to 77% (Employer Exhibits #5, #6, #7, #8).

The Employer's proposed salary increase for 1976 exceeds the amount initially budgeted by \$21,842. In order to stay within the state-mandated levy limitation the County will need to apply funds from its general fund--the County's savings account. The County's data on cost of living comparisons since 1974 indicates that its offer will leave the employees in a favorable position (Employer Exhibits #10, #11, #12, #13, #15).

The Employer is offering the Sheriff's Department employees a larger wage increase than for any other county employee group, 55¢ per hour proposed for deputy and above, compared to 25¢ to 44¢ for other groups (excluding department heads and elected officials). The Employer's wage offer puts Sheriff's Department employees above Sheboygan Falls, Kohler, and Plymouth in most categories but behind the City of Sheboygan. The Employer contends that a differential with Sheboygan is justified on the basis of its related exhibits on crime statistics. The Employer provided exhibits concerning private employer wages paid in 1976 (Employer Exhibits #18, #19, #45, #46).

The Employer states that its contract benefits for Sheriff's Department employees under its proposal would amount to 81 cents per hour in 1976 and 73 cents per hour in 1977. There would also be additional improvements already agreed to of vacation acceleration and three amenity days (not previously authorized).

The minimum cost impact of the Employer's wage proposal is \$242,559 for 1976 and \$240,403 for 1977 (plus some insurance increase not yet determined) (Employer Exhibit #29).

The Employer concludes that its wage offer is the most generous it has made to any group of employees, that it has no problems of recruitment or turnover, and that too large an increase for these employees might in the future have a negative impact on the number of county employees and the level of services provided.

Union Position on Wages. The Union's law enforcement wage comparisons are with counties and municipalities within 50 miles of the Sheboygan County borders, including 11 counties and 14 municipalities, and excluding the City of Milwaukee and Milwaukee County. The Union contends that Sheboygan County works its law enforcement offices more days per year and pays them less in wages than most of the other communities. Union Exhibit #61, p. 6, shows that Sheboygan County under either the County or Union wage proposal would have the lowest pay for 1976 of any of the 26 communities compared, except for the City of Kewaunee. The City of Sheboygan wages for 1976 exceed Sheboygan County's 1976 wage proposal for positions such as deputy, sergeant, detective and lieutenant by amounts ranging from 68 cents per hour to \$1.05 per hour (Union Brief, pp. 59-60). The Union quotes arbitrators who have questioned whether it is useful to compare law enforcement departments on the basis of crime indexes (Union Brief, p. 61). The Union questions the County's comparisons on public protection costs among counties since they do not show the specific costs of items included under "Public Safety" and do not reveal items such as the special deputy costs of policing "Road America." The County's exhibits do not indicate whether other counties had a similar increase in the relative costs of the Sheriff's Department in comparison to other county expenditures.

The Union challenges County Exhibit #20 as not accurately reflecting private industry wages in the County since the Department of Industry, Labor and Human Relations reports that October, 1976 manufacturing employment averages \$5.37 per hour in Sheboygan County (Union Brief, p. 64).

The Union contends that wage increase comparisons with other Sheboygan County employee groups should not be used to limit the increases to the Sheriff's Department. The County's December, 1975 wage offer to this bargaining unit indicates that the County recognized the disparity in law enforcement wages.

Concerning the County's use of cost-of-living comparisons from January, 1974, the Union contends that much of the wage increase beginning in 1974 was needed to catch up with increases in the cost of living which had occurred earlier (Union Brief, p. 68-69).

The Union agrees that it is requesting large wage adjustments for 1976 and 1977 but contends that such adjustments are needed because of the extreme inequity that exists between employees of the Sheriff's Department and surrounding counties and municipalities. While the Union offer approaches competitiveness, it does not achieve it. The Union points out that its 1976 wage request is the same as the Employer offered in December of 1975.

Since wages are the major or one of the major issues in this arbitration, the arbitrator will reserve comments on this issue until the concluding section of this report.

ISSUE FIVE. Incumbent Step Progression. The Union and the Employer have agreed upon a series of step increases from January, 1976 to February, 1980 for positions such as Account Clerk II and Secretary I. The purpose was to facilitate the implementation of a new salary schedule.

The Employer does not believe that the schedule needs to be published with employee names as part of the contract. In two years parts of it may become obsolete as the result of promotions or terminations. The Union proposal would list the names of the incumbents which the County feels would intrude on their privacy. It also feels that the practice could be discriminatory since it only publishes by name the positions held by females.

The Union feels that the listing of the employees by name and the dates of the step increases is necessary for clarity and to eliminate confusion or dispute as to the meaning of the agreement. The Union proposal would be easier for supervisors to administer without misunderstanding.

Concerning discrimination, the County has exclusive hiring authority and the Union assumes it has been exercised in good faith.

Arbitrator's comment. This is a minor issue since the parties are in agreement on the steps. While it may be unusual to publish employee names in a contract, there seems to be some rationale for doing so for clarity in administration of the new pay plan. The information like the rest of the pay categories in the contract is public information.

ISSUE SIX. Job Descriptions. The County is proposing a section on job descriptions as follows:

9. Job Descriptions: The class specifications defining each class of positions are descriptive and not restricted in order to give department heads and supervisors a free hand in making work assignments. The assignment of an employee to a class shall not be construed to limit that employee's work responsibility to the duties set forth within the specification for that class. It is intended that there shall be the greatest degree of flexibility in work assignments so that employees may obtain experiences in areas of work not normally included within their class specifications. Through such work experience they may enhance their qualifications and have a higher likelihood of being considered for promotion when vacancies occur or new positions are created. No claim shall be permitted for additional wages because of work performed of a nature that normally would have been carried out in a higher wage classification nor will deductions be made for work normally included with a lower classification.

The County states that Job Descriptions are broad outlines and that the operation of the Department requires the flexibility to move from one work assignment to another to provide effective law enforcement in the County.

The Union states that the County proposal destroys any integrity job descriptions or specifications might otherwise have. An "Account Clerk I could be assigned to cook breakfast, do the dishes, dispatch, control riots, patrol, whatever there is to do." (Union Brief, p. 79) There are no time limits on such reassignments. The Union states that the position as drafted is contrary to the division of labor the parties recognize when graduating the pay scale among classifications.

Arbitrator's comments. The Employer refers to its proposal as "standard language" but the arbitrator did not find such a clause in the law enforcement contracts submitted in this case. Such a clause is found, however, in the 1976-77 contract between Sheboygan County and its Courthouse and Welfare Department and Clerical Employees.

The arbitrator wonders why Mr. Wilson of AFSCME agreed to such a clause in the above contract but is so critical of the same proposal in the Sheriff's Department contract.

ISSUE SEVEN. Vacations. The parties seem to be in agreement on the vacation schedule except for its application to deputies working a 6-2 shift. In the past the deputy could schedule his vacation week so that it fell on his six-day cycle, thereby giving him six days vacation pay instead of five. The County proposes that all employees in the department be treated alike by calling a week 5 days in all cases.

The Union contends that eliminating the six-day week of paid vacation would result in a wage loss of about \$2,797 (for 73 days lost at \$38.32 per day) for the average employee over a 25-year period (Union Brief, p. 83). The 1974-75 Police Association Agreement, page 8, defined vacation benefits as follows: "A week shall be defined to be the employee's standard work week." The Union feels that an inequity should not be corrected by taking benefits away from certain employees. Vacation benefits can be differentiated considering the fact that some employees work Monday through Friday and others work a 6-2 schedule. Union Exhibit #61, page 11, shows that in 23 area county and city law enforcement contracts, 14 do provide for the six-day vacation schedule.

Arbitrator's comment. The Employer is trying to obtain uniformity in vacations for all Sheriff's Department employees and the Union is trying to retain an existing benefit.

ISSUE EIGHT. Amenity Days Off. The Employer claims that during negotiations it was informed that employees were presently enjoying an additional 3 days off to be taken any time they wished. These are referred to as "Amenities Days." It is not known when the practice began, perhaps 20 years ago. The practice was never authorized by the County Board or any of its committees or any previous labor contract. The County maintains it has a claim for the return of the value of those 3 days pay from each employee for a minimum of the last six years. It cites Supreme Court cases involving unauthorized payments (Employer Exhibit #22).

The Employer's proposal is to drop any claim for back pay and to grant the 3 days off as a matter of contract right. It estimates that if 50 employees received this benefit that the improper payment for six years would total \$34,488. The forgiveness of this amount is included as part of the County's minimum cost for 1976 contract improvements (Employer Exhibit #29).

Both the Union and the Employer propose to grant these 3 "shift-adjustment amenities days" in the 1976-77 contract but the Employer's statement also adds "and the County agrees that it will drop all claims for such days used in the past although then not legally authorized."

The Union does not want to be forced to admit that a benefit it believes was legally granted was improper and it also objects to the past benefit being costed in the 1976-77 contract.

The Union contends that authoritative employer agents knew about, approved, and recognized the benefit by overt act and silence (Sheriff and Corporation Counsel). An agent can commit the agency he or she represents by inaction or by expressed action (Union Brief, p. 86). The Union states that the cases cited by the Employer dealt with County-elected officials and did not include collective bargaining agreements. The Union does not object to Sheboygan County waiving any claim but it does not support the contention that amenity days are now bonus benefits to the employees.

ISSUE NINE. Filling Vacancies, Seniority. The Employer's proposal is as follows (Article XXIII).

#### VACANCIES

Whenever any vacancy exists for positions within the bargaining unit notice of said vacancies shall be posted for 10 days on the bulletin board in the department for the information of all employees. Employees interested in applying for the position shall sign the posted notice for the vacancy. The vacancy shall be filled by the Sheriff from the top 3 names of a list of qualified eligibles which shall be certified to him by the Law Enforcement Committee. The certification of qualified eligibles by the Law Enforcement Committee shall be within its sole discretion and not subject to the grievance procedure."

The Union's position is as follows: (Article XXIII)

Whenever any vacancy exists for positions within the bargaining unit notice of said vacancies shall be posted for ten (10) days on the bulletin board in the department for the information of all employees. Employees interested in applying for the position shall sign the posted notice for the vacancy. The position shall be awarded to the most qualified applicant, provided that seniority shall prevail unless a junior employee has clearly superior qualifications. In determining qualifications, the Employer may administer applicable written and oral examinations, conduct interviews, and consider other pertinent factors and skills.

The Employer wants to be able to hire the most qualified applicant without regard to seniority. The Employer proposes to continue Section 44.11 through 44.13 of the County Code of General Ordinances as departmental rules. Under these ordinances the Sheriff fills vacant positions from a list of three eligibles certified by the Law Enforcement Committee. Promotions are made on the basis of a list of qualified eligibles and the Sheriff selects from the top three with the highest qualifications. The ordinances provide for posting vacancy and promotional openings and for written examinations and oral examinations (Employer Exhibit #38).

The Union argues that the Employer assumes that the County's Civil Service Procedure concerning vacancies is infallible and that the individuals involved (Sheriff, Law Enforcement Committee and Examining Board [any member of the Sheboygan County Bar Association, private sector personnel director and an administrative head of another law enforcement agency]) cannot fail but to select the most qualified applicant. The final decision is made by a local elected official, the Sheriff. The outcome is not subject to the grievance procedure. There is certainly the possibility that persons active in Union grievances and negotiations might be passed over, even if highly qualified.

The Union cites a number of AFSCME law enforcement affiliates in the North Shore District which operate under stricter seniority provisions in the filling of vacancies than the Union is proposing in this case (Union Brief, p. 91). The Employer's position gives no weight at all to seniority and no preference at all for bargaining unit members in comparison to anyone "off the street."

ISSUE TEN. Civil Service Ordinances. The Employer's final offer states: "If the County's offer is adopted by the arbitrator, then rescind the civil service ordinances. But if the Union's offer prevails, then retain the Civil Service laws."

The Union states: "The Union proposes to rescind the Civil Service rules in any area said rules conflict with the collective bargaining agreement."

The Civil Service ordinance applies only to the Sheriff's Department employees. In the past the Sheriff's Department labor contracts were written in supplementation of the Civil Service provisions.

The Union requests that the arbitrator rule on the permissability of one party conditioning the final offer of the other. Sheboygan County has structured its proposal so that its final offer is implemented regardless of the arbitrator's decision:

Sheboygan County. . . If the County's final offer is adopted by the arbitrator then rescind the Civil Service ordinances. But if the Union's offer prevails, then retain the Civil Service laws."

"Union Exhibits #4 and #57 and the testimony of Officer Kruis and cross-examination of corporation counsel all indicate prior to the Investigatory Hearing of July 22, 1976, Sheboygan County and Local 2481 agreed to the rescision of the Civil Service Ordinance" (Union Brief, p. 96). The Union asks whether the Employer is engaged in legal maneuvering to achieve potential grounds for appeal to vacate an award made in the Union's favor.

The Union argues that the County, at final offer, has to make an offer of finality, not conditional. The Union states that "the terms of a collective bargaining agreement unless otherwise provided in such agreement supercede any local ordinance or law unilaterally implemented or maintained by the municipal employer or said subject" and that "it would be a prohibited practice by the municipal employer to violate any of the terms of the collective bargaining agreement even if in so doing it relied upon local ordinance to the contrary" (Union Brief, pp. 97-98).

Arbitrator's comment. In Employer Exhibit #39, the Employer states, "The County proposes that the remaining paragraphs (of the Civil Service Ordinances) that have not been emasculated by the labor contract be rescinded. If then proposes to make the provisions not inconsistent with the labor contract operational rules of the department." I think that the County here concedes that the labor contract takes priority over any County ordinances that are inconsistent with the contract. This has apparently been recognized in the past and some of the ordinances are now obsolete and inoperative.

The arbitrator's decision may cause additional sections to become inoperative. The County can then, if it wishes, repeal or modify the ordinances to make them conform to the revised contract.

#### ARBITRATOR'S ANALYSIS

This is a complex case involving large numbers of exhibits, extensive briefs, and many issues. The Union outlined its stand on 20 issues. The Employer listed 10 issues. The difference lies in the grouping of issues. For example, the Employer grouped those relating to fair share as one issue. The arbitrator followed the Employer's approach and used ten issues also.

In deciding whether the total package of the Employer or the Union is more reasonable, the arbitrator has divided the issues into two categories: primary and secondary. The primary issues are major issues in terms of budget impact or of impact on the collective bargaining relationship. The secondary issues are less significant from a budget or labor relations standpoint. The position of the parties on the primary issues should have more influence on the decision of the arbitrator.

I consider the primary issues in this case to be wages, fair share, management rights, and vacancies-seniority. I regard the other matters as secondary.

#### SECONDARY ISSUES

Definitions (Issue One). As indicated in my review of this issue, I find the Union approach to be more reasonable. I think it is appropriate to include the Matrons as regular part-time employees in view of the importance of their work and their coverage under the insurance programs. While their work schedules cannot be predicted in advance, certain persons are regularly called in for this duty as the need arises and they are not the same as other casual or temporary employees. As I indicated also some of the concern of the Employer on this issue might be alleviated if the wording of the Union's proposed Section 4 would start as Section 2 does with "Regular Part-time Employees."

Incumbent Step Progressions (Issue Five). This is definitely a minor issue. The parties are in substantial agreement. I have a slight preference for the Union approach in the interests of clarity. I do not think the affirmative action issue

is significant. It happens that this group of employees are all females but there is no reason to believe that the Employer would not consider both male and female applicants as vacancies are filled.

Job Descriptions (Issue Six). I agree with the County that there may be a need for some flexibility in job descriptions and job assignments but I find the Employer proposal to be too broad to be a practical approach. It is so sweeping as to raise the question of whether there is any need for job classifications. I am sure that it is not the intent of the Employer to change the basic duties of each category of employees. Perhaps in a future contract the parties can negotiate a more practical approach to this issue.

Vacations (Issue Seven). As I indicated earlier the Employer is here trying to achieve uniformity among county employees concerning vacation benefits and the Union is seeking to retain a past benefit. In view of the wage increases, the amenity days, and other contract improvements, I think that the Employer's position is more reasonable.

Amenity Days off (Issue Eight). The parties have agreed to continue this benefit in 1976-77. I think that the Union has made the better case concerning the legality of the benefit. In any event its legality for 1976-77 would be established by including this benefit in the contract.

I question, as does the Union, the Employer's position in including the forgiveness of the past benefit as a new cost in the 1976-77 contract.

Civil Service Ordinances (Issue Ten). As I indicated in discussing this issue earlier, the arbitrator in selecting either the Union or the Employer's final offer, will be determining the terms of the 1976-77 contract and such contract terms will then take precedence over the related Civil Service Ordinances and it may make parts of such ordinances inoperative, as has apparently happened in the past.

The County may then modify the ordinances or adopt the parts that are still pertinent as departmental rules.

#### PRIMARY ISSUES

Vacancies-Seniority (Issue Nine). The questions here are whether seniority should be given consideration in hiring and promotions and whether or not such decisions should be subject to the grievance procedure. This is the kind of issue that can best be resolved through collective bargaining to arrive at a mutually acceptable solution.

This is a basic union-management issue. Generally unions prefer that in filling vacancies major weight or exclusive consideration be given to seniority. Employers prefer to give major or exclusive consideration to ability.

A variety of compromises are possible on this issue ranging from simple statements that seniority shall be considered to clauses that require that the most senior employee be given the position if qualified.

Under the 1974-75 contract with the Sheboygan County Law Enforcement Association there seems to have been no provision for consideration of seniority in filling vacancies nor any provision for possible review of management action.

The Employer proposal does provide for the posting of vacancies but seniority is not mentioned and it is not clear whether promotions would be subject to the grievance procedure under the Employer's proposal.

The Union proposal here is not an extreme one. It does not go as far in weighting seniority as do some of the law enforcement contracts in the area (such as the City of Kiel, City of Kewaunee, Manitowoc County, City of Manitowoc, and Calumet County).

The Union proposal states that "seniority shall prevail unless a junior employee has clearly superior qualifications." The Union proposal provides that "the Employer may administer applicable written and oral examinations, conduct interviews, and consider other pertinent factors and skills." Thus some of the procedures and practices that the Employer has been using under the Civil Service ordinances could be continued. The arbitrator assumes that the Employer decision would be subject to challenge under the grievance procedure, as is the case in many collective bargaining contracts.

While I would prefer that this matter had been resolved through collective bargaining, I think that on the basis of what is before me, the Union position is more reasonable. Some consideration should be given to seniority.

Acceptance of the Union position would require some modification of the Civil Service Ordinance or would at least make part of them inoperative since the collective bargaining contract would prevail.

Management Rights (Issue Two). This again is a matter best negotiated between the parties so that a mutually acceptable solution might be reached. As indicated in my previous discussion of this issue the clauses proposed by each party do not seem to be common ones in most area law enforcement collective bargaining contracts. The Union is concerned with the opening statement of the Employer's Management Rights clause because of the vagueness of the phrase "with applicable laws, rules and regulations." Does this mean that past or future Civil Service Ordinances would supercede contract provisions? The proposed Union sections (a) and (c) are more specific than those commonly found in most law enforcement contracts. I do not think, however, that inclusion of these clauses would unduly restrict management. As I interpret the clauses management could make changes in classifications and job duties but the subsequent wages, hours, and working conditions would be subject to negotiation.

Concerning clause (c) the shift rotation is to stay the same for the duration of the agreement. The Employer indicated no present plans to change this and it is such a basic part of the working conditions that changes ought to be negotiated.

Taking the Management Rights sections as a whole, including the sections already negotiated, I would support the Union position as being a little more reasonable.

Dues Deduction and Fair Share Payments (Issue Three). This is a complex issue including a number of sub-issues: dues deductions, withdrawal notice, religious exemptions, political expenditure refunds, waiver of initiation fees, forfeiture, fair share election requirements, the election stipulation and initiation fees. The parties are in agreement that there may be a fair share provision in the contract but they differ substantially on many of the sub-issues related to it.

I will not repeat the detailed discussion I have provided earlier in this paper but I will summarize my rationale for finding the Union proposal more reasonable.

These are as follows: (1) Most of the area law enforcement employees that have granted fair share have not provided the restrictions and qualifications that the Employer is here proposing (Union Exhibit #61, p. 26). (2) The Union request to share in the decision on religious exemption is reasonable. It does need to represent all of the employees in the bargaining unit. (3) The Union's provisions concerning the fair share referendum are reasonable and in accord with common democratic practice. The Employer's proposal seems unduly restrictive. (4) It would be proper for the parties to jointly stipulate that the election be conducted by the W.E.R.C. using the usual forms and procedures. (5) The Employer is interfering with internal union administration in requesting a ban on initiation fees for these employees.

I understand the Employer's reasons for provisions that employees may withdraw the dues deduction notice on thirty days notice and also the desire for an additional deterrent against illegal strikes (the forfeiture provision). However, some parts of the forfeiture statement seem very broad such as the possibility that a strike in another county bargaining unit could cause termination of dues deduction and fair share for this unit. It also should be noted that the Union is providing a no-strike clause in this contract.

The Wage Issue (Issue Four). This is the most important issue being considered for the 1976-77 contract. Both the Union and the Employer proposals would result in large pay increases for members of this bargaining unit.

On the side of the Employer's proposal the most significant facts are that the proposed increase is larger than that granted any other Sheboygan County employee group, that it exceeds the budget estimates, that the County will need to dip into reserves to meet its 1976 budget proposals, and that it does more than offset recent cost of living increases.

The Union's principal argument is that a larger increase than that proposed by the Employer is necessary because of the inequity that exists between law enforcement pay in Sheboygan County and that of other area law enforcement agencies.

I think that the Union wage comparisons with law enforcement agencies in surrounding counties and cities are reasonable and proper. They do indicate a very substantial inequity for Sheboygan County employees in comparison with other counties and cities (Union Exhibit #61, pages 5, 6, 7, 8, 9, 10). The Exhibits presented are fairly complete for 1976 and they also show significant comparisons for 1977. Acceptance of the Union wage proposal would still leave Sheboygan County employees relatively low in comparison to other cities and counties.

The Employer has argued that a substantial differential should exist between law enforcement pay in the City of Sheboygan and Sheboygan County because of differences in the kind of work, crime statistics and the like. I do note that there is also such a differential between law enforcement wages in Appleton and Outagamie County and in some other cases the county wages tend to be lower than some of the city units (Union Exhibit #61, p. 6). In any event, acceptance of the Union proposal for 1976 would still leave Sheboygan County patrolmen well below Sheboygan City patrolmen. Union Exhibit #61, p. 6 shows that under the Union proposal Sheboygan County would rank 24th in deputy or patrolman wages for July 1, 1976. This is in comparison with 25 law enforcement agencies in the area.

The Union proposal for 1977 would result in some improvement in Sheboygan County's status, making it a little higher than Kewaunee County and Kiel (Union Exhibit #61, p. 10).

I do not think that ability to pay is a major issue for 1976 since the Employer offer is only 3 cents lower than that of the Union (55 cents versus 58 cents) and since the Employer did make an offer of 58 cents in December of 1975.

I would have preferred a lower increase for 1977 than that proposed by the Union (58 cents versus the Employer's 50 cents) in view of the large increase in 1976, in view of other contract improvements that the Union has secured, and in view of budget concerns.

The Union has made a strong case for a substantial wage increase to overcome a large pay inequity in comparison to other city and county law enforcement agencies in the area. The Employer has not been able to substantially refute these comparisons. It is clear that a significant inequity exists which should be corrected. The Employer's wage offers for 1976 and 1977 do recognize the need for a larger increase for Sheriff's Department employees than for other employees but the Union has established the need to do a little more toward reducing the inequity.

I, therefore, find that the Union's wage proposals for 1976-77 are more equitable than those proposed by the Employer.

#### CONCLUSION

This review of the primary and secondary issues in this dispute leads to the conclusion that the Union proposals in general are more reasonable and equitable than those of the Employer. This is true of both the primary and secondary issues. Particularly significant in this case were the dues deduction and fair share matters and the wage increase question.



AWARD

The arbitrator directs that the Union's last offer be incorporated into the 1976-77 contract between Sheboygan County and the Sheboygan Law Enforcement Employees, Local 2481, AFSCME, AFL-CIO.

Dated November 24, 1976.

Gordon Haferbecker /s/  
Gordon Haferbecker, Arbitrator